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UNITED STATES DISTRICT COURT

DISTRICT OF MASSACHUSETTS

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BETTY ANNE WATERS, as

Administratrix of the Estate of

KENNETH WATERS,

Plaintiffs,

v.

C.A. No. 04-10521-GAO

TOWN OF AYER,

NANCY TAYLOR-HARRIS,

ARTHUR BOISSEAU,

WILLIAM ADAMSON,

JOHN and JANE DOES 1-16,

Defendants.

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DEPOSITION of SCOTT M. SARSFIELD, a witness
called for examination by the Plaintiffs, taken
pursuant to Rule 30 of the Massachusetts Rules
of Civil Procedure, before Laurie K. Langer,
Registered Professional Reporter and Notary

1 Mr. Sarsfield, individually, and for the purpose
2 of this deposition, it's more than a
3 technicality, but for the purposes of this
4 deposition you're also testifying on behalf of
5 the District Attorney's Office so I want for
6 this question that I ask you to be clear that
7 I'm asking not only have you not been able to
8 locate the file, but has the Middlesex County
9 District Attorney's office been able to locate
10 that missing Waters file that you searched for
11 in the fall of 1999?

12 A. To my knowledge no member of the D.A.'s office
13 has actually, has any possession or has ever
14 possessed the trial file from the Waters case.

15 Q. You say no member of the D.A.'s office has ever
16 possessed it. It was certainly in the
17 possession of the office in 1982?

18 A. In my tenure.

19 Q. To clarify. During your tenure to your
20 knowledge and to the knowledge of the District
21 Attorney's Office, from 1996 to the present no
22 one has had possession of the file, the Waters
23 file you attempted to locate in 1999?

24 A. That is correct. To the best of my knowledge.

EXHIBIT

1 Q. Of all of the files that you've managed during
2 your tenure from 1996 to the present, and I
3 gather that number is in the thousands?

4 A. Correct.

5 Q. How many files, Mr. Sarsfield, have gone missing
6 in the same way that the Waters file went
7 missing?

8 A. As far as the files that I've managed, I don't
9 believe that any have. Prior -- files prior to
10 1989 we've had several that we have been unable
11 to locate. I couldn't put an exact number on
12 it.

13 Q. Okay. So the Waters case, the Waters file that
14 you were asked to locate in 1999 was not the
15 only file you've been asked to locate but have
16 been unable to do so?

17 A. That's correct.

18 Q. But I think, if I understood your testimony,
19 those few instances when you've been unable to
20 locate a closed case file in those instances
21 we're talking about case files that are older
22 than 1990?

23 A. Generally that's correct.

24 Q. Okay. Meaning what, meaning?

1 A. The, the -- the only thing I'm confident to say
2 is that since 1996 when I took over my duties,
3 I'm confident that we haven't lost any files
4 since then. I can't attest to anything prior to
5 that. So I guess the pattern is that if we
6 don't have inventory sheets, it's more
7 difficult, so the reason I said 1989 is if
8 there's no inventory sheets it's much more
9 difficult to locate a file.

10 Q. And I understand, and I'm not asking you to
11 testify today that every case file that is due
12 to be preserved has been preserved since the
13 beginning of time to present. But I do wonder,
14 if you could tell me, by assigning a number or
15 range, if any, other than the Waters case, had
16 there been any files, for any period of time,
17 you know, five years ago, ten years ago, 20
18 years ago that you've been asked to locate that
19 should have been preserved but you haven't been
20 able to locate them other than Waters?

21 A. There have been files that I have been unable to
22 locate.

23 Q. Okay.

24 A. With the exception, including Kenneth Waters.